

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 92 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

M/S.SAURASHTA BOTTLING P.LTD.

Appearance:

Mr. B.B.Naik for MR MANISH R BHATT for Petitioner
Mr. Saurabh Soparkar for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 19/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

By this application, the Revenue has suggested the following two questions seeking a direction on the Income-tax Appellate Tribunal to forward statement of case in respect thereof under section 256(2) of the

Income-tax Act.

"1. Whether, the Appellate Tribunal is right in law in holding that bottles/shells were plants and since the cost of each of the bottles/shells was less than Rs.750/- the assessee would be entitled to claim 100% depreciation under section 32 of othe Income-tax Act, 1961 ?"

"2. Whether, the Appellate Tribunal is right in law in directing the Income-tax officer to allow the assessee's claim for deduction of Rs. 1,32,421/- holding that section 37(3A) was not applicable to these expenses ?"

2. So far as the question no. 1 is concerned, it is squarely covered by our decision in ITR 206 of 1985 decided on 13.2.1998 and in other cognate matters. Therefore, this question does not arise for our determination since it is already answered in other cases.

3. So far as the question no. 2 is concerned, the Tribunal while refusing to refer it observed the items covered thereunder of costs of soft drinks supplied to the purchasers without charging as trade discount, and costs of openers given to the dealers cannot be treated as "advertisement" expenditure as contemplated by section 37(3A) of the Act. Under the said provision, the type of expenditure covered by sub-section (3A) was indicated as per sub-section (3B) and that was, inter alia, expenditure incurred on "advertisement, publicity and sales promotion." Therefore, even if an expenditure in question may not have been incurred on advertisement, it was required to be seen as to whether it was incurred on publicity or sales promotion. Therefore, a question of law arises for consideration of this Court. The Tribunal is therefore, directed to forward statement of case in the matter as regards the question no. 2. Rule is made absolute accordingly with no order as to costs.

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